



**MINUTES OF MEETING OF THE CITY COUNCIL
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, May 23, 2000, 8:00 p.m.**

MEETING

The Regular Meeting of the City Council was called to order by Mayor Cooper at 8:00 p.m., followed by the Pledge of Allegiance led by Council Member Henson.

ROLL CALL

Present: COUNCIL MEMBERS Jimenez, Hilson,
Rodriquez, Ward, Dowling, Henson
MAYOR Cooper
Absent: None

PRESENTATION: Poster and Essay Contest Winners and Environmental Achievement Awards

Mayor Cooper thanked all for coming to the meeting and explained what the contest is about. Council Member Hilson, Chair of the Council's Environment Committee, introduced the program and acknowledged the donors. Council Member Hilson also acknowledged staff and other members of Council's Environment Committee: Council Members Olden Henson and Kevin Dowling, the selection committee that included Ed Mullins from the Hayward Chamber of Commerce and Danny Galang from Hazardous Materials of the Fire Department, and Joe Lucia from Water Pollution Source Control of the Public Works department. Mayor Cooper and Council Member Hilson presented the awards to both the student art and essay winners of the Contest. Mayor Cooper then drew a name for the grand prize of a \$500 gift certificate won by Amy Hakanson, Winton Middle School.

The 2000 Environmental Achievement Awards were presented to local businesses and individuals for environmentally friendly business practices through diverse, and cost-effective ways.

Mayor Cooper called for a 5-minute recess at 8:55 p.m.

PUBLIC COMMENTS

Frank Goulart, 22248 Main Street, discussed the Harders, two pioneers to the area. He is asking for a reunion of the Sons of the Pioneers. Friends of Hayward are trying to move the Harder house from A Street to the old Harder property.

Jason Moreno, 25200 Carlos Bee Boulevard, discussed the Cal State Newspaper on the Web Site.

Francisco Abrantes, 22815 Alice Street, discussed the loss of businesses in this City.

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CONSENT

1. Approval of Minutes of the City Council Meeting of May 16, 2000

It was moved by Council Member Ward, seconded by Council Member Henson, and unanimously carried to approve the Minutes of the City Council meeting of May 16, 2000.

2. City of Hayward Paratransit Program Agreement for Fiscal Years 2000-01/2001-02

Staff report submitted by Social Services Planning Manager Korth, dated January 11, 2000, was filed.

It was moved by Council Member Ward, seconded by Council Member Henson, and unanimously carried to adopt the following:

Resolution 00-065, "Resolution Authorizing the City Manager to Execute an Agreement with Friendly Transportation, Inc. to Provide Paratransit Services in Fiscal Year 2000-01"

3. Approval of Fees to be Charged for Costs Incurred in 1999 for Administering the Residential and Mobile Home Rent Stabilization Ordinances

Staff report submitted by City Attorney O'Toole, dated May 23, 2000, was filed.

It was moved by Council Member Ward, seconded by Council Member Henson, and unanimously carried to adopt the following:

Resolution 00-066, "Resolution Amending Resolution No. 99-109, the Master Fee Resolution for Fiscal Year 1999-2000, Relating to the City Attorney Department, Establishing Time for Payment of Rent Stabilization Annual Fees"

HEARINGS

4. Appeal of Planning Commission Denial Action of Variance 00-180-09 and Appeal from Site Plan Review 00-130, Previously Approved by Director of Community and Economic Development – Paul Lopez of Standard Pacific of Northern California (Applicant/Owner) - Request Site Plan Approval to Construct 11 Single-Family Residences on 2.25 Acres and a Variance for a 5' Side Street Fence Setback for Parcel A – The Project is on Ruus Road and the Extension of Panjon Street

Staff report submitted by Planning Manager Anderly, for May 23, 2000, was filed.



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Director of Community and Economic Development Ehrenthal described the project and the history of City actions, including Planning Commission actions. The quality of homes is comparable to Twin Bridges. She described the appeal, and Planning Commission's denial of it. Mrs. Byar's appeal is based on an improper environmental review; inadequate drainage; privacy concerns; and fence problems.

She stated that there is no evidence to substantiate the claim of environmental damage. The drainage will be controlled through a drainage system; the second floor windows are opaque bathroom and bedroom windows which should allow for neighbor privacy are set by building code, the homes have a greater setback than required. City records show the masonry wall was started six years prior to a permit being granted.

Council Member Henson asked about the drainage issue, and quoted from Mr. Moss' letter. He then asked about the lab report citing the alleged contamination. He also asked about the trees mentioned in the attorney's letter.

Director of Community and Economic Development Ehrenthal said she spoke with the City's Landscape Architect, who felt the list of trees suggested by the appellant's attorney were not appropriate alternatives to the trees suggested. She also said there is no documentation for the claim of toxins in the soil.

Council Member Hilson asked for further clarification of the issues, particularly the toxic report. He asked whether the toxins would have to be present today. There is no report to say one way or the other. The developer presented a report that indicated there are no toxins present on the site. Council Member Hilson asked about pipes or anything that might be below the proposed grade.

Director of Community and Economic Development Ehrenthal explained the drainage system further. There is no change in the current situation.

In further explaining the drainage, Public Works Director Butler answered that, implicit in Condition 20, the drainage plan will be approved by the City Engineer.

Council Member Hilson then asked about the wall on Mrs. Byar's property and was told that the 3-feet of dead space would remain.

Mayor Cooper opened the public hearing at 9:31 p.m.

Glen Moss, 1297 B Street, attorney for the appellant, gave further details on the various issues raised in his letter. He said the environmental issue is based on the 1971 letter from Mr. Byars to the Hayward City attorney, which refers to the toxic problems on the school district property. The wall under construction was to be a wooden wall. He showed letters from neighbors. There is

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nothing in the plans for maintenance of the drainage ditch. He discussed each issue including the fence, which was located as required by the City.

Council Member Ward asked about the documents on file with the City. He suggested whether the contaminated soil might have been covered in the past.

Director of Community and Economic Development Ehrenthal indicated that phase one does not address any toxic questions. She said some leaking storage tanks were found about one-half mile from the property.

Mary Byars, P.O. Box 337, the appellant, showed various photographs and maintained that they originally had a wooden retaining wall which they wanted to replace with another wooden wall but were prevented from doing so by the City.

Donna Cadd, 738 Eastwood Way, a neighbor of Mrs. Byars, talked about the burrowing owls on the property. She mentioned that the owls have been seen as recently as a month ago.

Ken Miller, 1676 North California Boulevard, Walnut Creek, Attorney for Standard Pacific, discussed the representations made by the City to Standard Pacific prior to the sale of the property. The plans were submitted for approval and were approved. He indicated that he had heard opinions that there are toxins on the property. Standard Pacific has asked for a review by the City to look for any information. He quoted a study by a professional group who determined through a survey that there are no burrowing owls on the site. The delays might destroy the project.

Council Member Rodriguez discussed both the owls and the fence. Standard Pacific does not feel responsible for the Byars wall. She suggested that there is an engineered plan to pickup the drainage.

Mayor Cooper closed the public hearing at 10:08 p.m.

City Attorney O'Toole stated that the site plan review was determined in April 1998.

Council Member Henson **moved**, seconded by Council Member Hilson, to deny the appeal.

Council Member Ward suggested that several of the issues, as well as the retaining wall, are between the City and the homeowner. He said the appellant had several months to find the information she was seeking. He would support the motion, and suggested that perhaps the retaining wall should come back to Council. As to the drainage issue, he asked if there was anything regarding the maintenance of the swale.

Public Works Director Butler suggested that the condition is the best solution since there will be a requirement for an easement.

Council Member Hilson asked questions about the drainage pipe under the foundation of the wall, and the pipe under the foundation and to where it might be draining.



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Public Works Director Butler said any pipe should be visible. If it exists, it will have to be dealt with. Generally, drainage pipes are built through the wall and not under the foundation.

Council Member Hilson then asked about the toxic issue and was told that there is no evidence now of any such problem.

As to whether staff has a copy of the original lab report, Director of Community and Economic Development Ehrenthal said staff did not and does not know if it or the lab still exists.

Public Works Director Butler added that there is a swale in back of each property for owner maintenance.

Council Member Rodriguez said it was unfortunate that this has occurred. There should be flexibility and negotiating.

Mayor Cooper said she would support the motion, although the maintenance of drainage ditches is a concern. She asked whether there is anything presently growing on that land. If there is, it isn't toxic. She said she had no great concern about the fences. It would be logical to assume there would be access to the 3-foot space for maintenance at least, as there has been during the past number of years.

It was moved by Council Member Henson, seconded by Council Member Hilson, and carried by the following roll call vote to adopt the following:

AYES: Council Members Jimenez, Hilson, Ward, Dowling,
Henson
MAYOR Cooper
NOES: Council Member Rodriguez
ABSENT: None
ABSTAINED: None

Resolution 00-067, "Resolution Denying Appeal from the Director of Community and Economic Development's Approval of Variance No. 00-180-09 and Site Plan Review No. 00-130-02 as to Development of Tract 7099, Located at Ruus Road and Proposed Extension of Panjon Street"

LEGISLATIVE BUSINESS

5. Request for Continuance of Appeal of Planning Commission's Action Denying Zone Change 99-190-01 – Society of Saint Vincent de Paul (Applicant/Owner) - Request to Change Zoning

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to Construct Ten Residential Cottages and Extend Grace Court (Private Street) to Melvin Court
- Property is Located on Grace Court Between Grace Street and Smalley Avenue and at 22331
Mission Boulevard (*continued from 3/21/00*)

Staff report submitted by Senior Planner McClellan, dated May 23,
1999, was filed.

Director of Community and Economic Development Ehrental presented the information
requesting a further continuance due to further revision of the plans, a decrease in the number of
units, the possible addition of a play area, and further meetings and communication with neighbors.
Staff suggested the hearing be held over until July 18.

Mayor Cooper opened/and closed the public hearing at 10:23 p.m. Those residents present for this
item agreed to come back at the later date.

It was moved by Council Member Ward, seconded by Council Member Henson, and unanimously
carried, to continue this item until July 18.

COUNCIL REPORTS

There were no Council reports

ADJOURNMENT

Council Member Dowling asked that Mayor Cooper adjourn the meeting in honor of Emma Sacks,
mother of former Library Commissioner Barbara Sacks at 10:26 p.m.

APPROVED:

Roberta Cooper, Mayor, City of Hayward

ATTEST:

Connie Macias Acting City Clerk, City of Hayward